

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MARCH 29, 2005

LOCATION: MACOMB TOWNSHIP MEETING CHAMBERS
54111 BROUGHTON ROAD, MACOMB, MI 48042

PRESENT: CHAIRMAN, BRIAN FLORENCE
MEMBERS: EDWARD GALLAGHER
TONY POPOVSKI
VICTORIA SELVA

ABSENT: DAWN SLOSSON

ALSO PRESENT: COLLEEN OCONNOR, TOWNSHIP ATTORNEY
JEROME R. SCHMEISER, PLANNING CONSULTANT
(Additional attendance record on file with Clerk)

Call Meeting to Order.

Chairman FLORENCE called the meeting to order at 7:02 P.M.

1. Roll Call.

Chairman FLORENCE called the Roll Call. Member SLOSSON absent.

2. PLEDGE OF ALLEGIANCE.

3. Approval of Agenda Items. *(with any corrections)*
Note: All fees have been received and all property owners were notified by mail

MOTION by GALLAGHER seconded by SELVA to approve the agenda as presented.

MOTION carried.

4. Approval of the previous meeting minutes:

MOTION by GALLAGHER seconded by POPOVSKI to approve the meeting minutes of March 8, 2005 as presented.

MOTION carried.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MARCH 29, 2005

PURPOSE OF HEARING:

To consider the requests for variance(s) of Zoning Ordinance No. 10 for the following:

Agenda Number/Petitioner/ Permanent Parcel No.	Zoning Ordinance Section No.
--	------------------------------

(5) Daniel and Kristina Karas Permanent Parcel No. 08-31-277-011	Section 10.0311(E)(f)(5) 10.0311(D)(f)(5)
---	--

5. VARIANCE FROM THE PROVISION OF THE ZONING ORDINANCE;
Permission to vary:
Section 10.0311Ef5, to reduce the setback for pool from a structure from 10' to 6';
Section 10.0311Ef5, to reduce sideyard setback from 7.5' to 6'.
Located on the north side of Vandelay Drive, North of Eastview Driv; Section 31;
Daniel & Kristina Karas, Petitioner. Permanent Parcel No. 08-31-277-011.

Chairman FLORENCE read the findings and recommendations of March 24, 2005. They are as follows:

The petitioner is requesting to vary the provisions of the zoning ordinance that provides for side yard setbacks and the distance between the pool and the house in single family developments. The petitioners plan to develop an inground swimming pool in the rear yard of their property.

The property involves Lot 16 of the Lakeside Landing Subdivision and was created in accordance with the standards of Macomb Township for lot development. All setback requirements of the zoning ordinance have been met as it relates to the property. The easement which exists on the site has been in existence since the time the Lakeside Landings was developed.

With respect to the location of the pool, in relation to the structure, it has been the policy of the Township that such a variance could be granted if the petitioners would sign a "hold harmless agreement" relieving the Township of any liabilities that may be created as a result of the failure of the walls of the pool which in turn may cause damage to the house. The petitioners are requesting a variance to allow a 6' distance from the pool to the house rather than the required 10'.

With respect to the side yard, it is noted that the 7 ½' setback is the standard applied to all developments and has not proven to be burdensome.

It is also noted that according to the plan submitted, the pool would be situated 6" (inches) into the 20' easement along the north property line. That issue must be addressed by the Township Board.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MARCH 29, 2005

RECOMMENDATION:

It is recommended that the variance request to reduce the side yard setback be denied for the following reasons:

1. Compliance with the strict letter of the setback requirement would not unreasonably prevent the ownership from using the property as zoned. Other swimming pool structures planned in Macomb Township will be required to comply with the same setback requirements which are evidence that the proper setbacks would not be unnecessarily burdensome.
2. The granting of a variance as requested would give to the applicant an advantage or benefit not received by any other property owners in residential developments in Macomb Township. The other owners are or will be required to comply with the 7 ½' side yard setback requirement. As a result all other property owners do not have the opportunity to make use of an additional 1 ½' of the property.

There is nothing unusual about the parcel in question that sets it apart from other parcels in area or in Macomb Township. There is nothing to prevent any part of the side yard setback from being maintained 7 ½' from the property line. For example, there are no significant grade differences or natural feature such as a stream or wetland to prevent full use of the parcel according to the ordinance as written.

3. The variance would amount to reducing the side yard setback by approximately 20%.

With respect to the location of the pool to within 6' of the house, it is recommended that such a variance be granted if the petitioners agree to have their attorney prepare a "hold harmless agreement", relieving the Township of any liability as it relates to the malfunction of the pool walls. Said agreement to be approved by the Macomb Township attorney and recorded with the Macomb County Register of Deed's Office.

The following letter of explanation was submitted by the petitioner dated March 14, 2005 as follows:

"We have requested the special meeting to ask for a variance for an inground swimming pool. The back yard of our lot is small, and has a 20' easement along the north edge, which makes almost 50% of our yard useless. There is a drainage pipe in this easement that cannot be tampered with.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MARCH 29, 2005

After consulting with both the Water & Sewer Department, and the Building Department, we've come up with a way to accommodate the size of the pool that is acceptable to both departments, and hopefully to you, too.

On January 25th, I spoke with Tom Moilanen and Dennis LeMieux, both inspectors for the Macomb Township Building Department. Both inspectors agreed that the plans I have submitted to you are the best course of action. On January 28th, I spoke with Gerry Wangelin, an inspector from the Water & Sewer Department, and he concurred. Because the easement on our property contains a drainage pipe, we need the pool to be as far away from the pipe as possible.

We are requesting a variance that will allow us to put our pool 6 feet from our fenced property line, and 6 feet from our home. This would eliminate any worry that the pool would interfere with drainage issues from this lot and neighboring lots.

Thanks for you consideration.”

Daniel Karas, petitioner, was in attendance and reviewed the issues addressed in his letter of explanation.

Member GALLAGHER stated that the pool as proposed was offset and asked why he couldn't move it inwards from the side lot line.

Daniel Karas stated he was trying to use the lot to the best of his ability.

Public Portion: None.

MOTION by SELVA seconded by GALLGHER to close the public portion.

MOTION carried.

MOTION by GALLAGHER seconded by SELVA to deny the variance request of Section 10.0311(E)(f)(5)-Request to reduce the sideyard setback from 7.5 feet to 6 feet; Located on the north side of Vandelay Drive, north of Eastview Drive; Section 31; Daniel and Kristina Karas, Petitioner. The variance was denied since there is nothing to prevent them from moving the pool to the east and constructing the pool within the terms of the Zoning Ordinance.

MOTION carried.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MARCH 29, 2005

The following resolution was offered by SELVA and seconded by POPOVSKI:

Whereas, it has been satisfactorily presented that special conditions prevail that would cause an unnecessary hardship if the request would be denied and that conditions exist that are unique to the property and the granting of the request would not confer special privileges for the petitioner that would be denied other similar properties, that the variance request would be consistent with the spirit and intent of the Macomb Township Zoning Ordinance No. 10 under the findings and facts herein set forth;

Now, therefore, be it resolved that pursuant to the action of the Board that Section 10.0311(E)(f)(5)-Request to reduce the setback for a pool from a structure from 10 feet to 6 feet; Located on the north side of Vandelay Drive, north of Eastview Drive; Section 31; Daniel and Kristina Karas, Petitioner. Permanent Parcel No. 08-31-277-011. The variance was granted conditioned upon a "Hold Harmless Agreement" being signed and recorded with the Macomb County Register of Deeds Office.

MOTION carried.

6. OLD BUSINESS

None.

7. NEW BUSINESS

Jerome R. Schmeiser, Planning Consultant, stated the next regular scheduled meeting was May 10, 2005.

8. PLANNING CONSULTANTS COMMENTS

None.

9. MOTION TO RECEIVE AND FILE ALL CORRESPONDENCE IN CONNECTION WITH THIS AGENDA

MOTION by GALLAGHER seconded by SELVA to receive and file all correspondence.

MOTION carried.

MACOMB TOWNSHIP ZONING BOARD OF APPEALS
MINUTES OF A SPECIAL MEETING HELD ON
MARCH 29, 2005

ADJOURNMENT

MOTION by POPOVSKI seconded by SELVA to adjourn the meeting at 7:18 P.M.

MOTION carried.

Respectfully submitted

Brian Florence, Chairman

Beckie Kavanagh, Recording Secretary

BK